

HEALTH AND SENIOR SERVICES

DIVISION OF SENIOR SERVICES

DIVISION OF AGING AND COMMUNITY SERVICES

OFFICE OF AREA AGING ADMINISTRATION

Planning and Service Areas and Area Agencies on Aging

Proposed New Rules: N.J.A.C. 8:88A

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior
Services.

Authority: 42 U.S.C. §§ 3001 et seq.; 42 C.F.R. § 1321; and N.J.S.A. 40:23-6.38 and
6.44.

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-435.

Submit written comments by February 23, 2005 to:

Tina Wolverton, Administrator

Office of Area Aging Administration

Division of Aging and Community Services

New Jersey Department of Health and Senior Services

PO Box 807

Trenton, NJ 08625-0807

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The agency proposal follows:

Summary

The Older Americans Act of 1965 (Act), 42 U.S.C. §§ 3001 et seq., provides states with the authority and funding to administer and establish a broad network of services for older adults. In order to obtain funding, the Act, as amended, requires that the designated "State Unit on Aging" (State Unit) divide the State into Planning and Service Areas (PSAs) and designate a public or private nonprofit agency or organization as the Area Agency on Aging (AAA) for each PSA, among other things. The Act further requires that the State Unit establish procedures to provide due process to affected entities in the event that the State Unit initiates an action or proceeding to: revoke the designation of an AAA; designate an additional PSA within the State; divide the State into different PSAs; or otherwise affect the boundaries of the PSAs in the State.

Pursuant to Reorganization Plan 1996-001, the Division of Aging and Community Services, formerly known as the Division of Senior Affairs, is the designated State Unit in New Jersey. The rules at N.J.A.C. 8:88A set forth the standards for administration of the provisions of the Act in New Jersey consistent with the requirements of the Federal law.

The Department has reviewed N.J.A.C. 8:88A and has determined that, in addition to being mandated by Federal law, the rules remain necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were originally promulgated. Therefore, the Department determined to readopt the chapter; however, as N.J.A.C. 8:88A expired on September 7, 2004, the expired rules are proposed herein as new rules (see N.J.A.C. 1:30-6.4(h)). In addition, the Department has determined to propose technical amendments to the expired rules proposed as new rules.

First, the Department proposes amendments to reflect the redesignation of the State Unit from the Division of Senior Affairs to the Division of Aging and Community Services (hereinafter referred to as the State Division). In addition, the Department proposes an amendment at N.J.A.C. 8:88A-2.2(c)2 to reflect a change of the address to which PSA applications are to be sent.

The Department originally adopted N.J.A.C. 8:88A in 1999. 31 N.J.R. 633(a) (March 1, 1999); 31 N.J.R. 2620(a) (September 7, 1999). N.J.A.C. 8:88A expired on September 7, 2004, and are proposed herein as new rules.

New Jersey is divided into 21 PSAs, with each PSA representing a county. In addition, each PSA currently has a designated AAA; in all instances, the County Office on Aging meets the designation requirements.

Following is a summary of the proposed new rules.

Establishment of a PSA is based on the geographic distribution of older individuals in the State as measured against the percentage of the population with the greatest social and economic need residing in such areas. In order to be designated as a PSA, a region in the State must be recognized for the purpose of area-wide planning, and must include a unit of general purpose local government which serves a population of 100,000 or more. One AAA is to be designated for each PSA. An AAA may be an established private nonprofit office, or office segment on aging which is operating in a PSA. Or, the AAA may be any office or agency of a unit of general purpose local government which is designated to function only for the purposes of serving as an AAA by the chief elected official of the unit of general purpose local government. In either

instance, the office must be capable of providing, directly or through contract, all of the services designated by the Act (and set forth in these rules).

Prior to taking any final action regarding the designation, modification or revocation of a designation of a PSA or an AAA, the State Division is required to hold a public hearing. The hearing is to be held at a time, date, and place that reasonably will provide affected parties, including service providers and older adults, an opportunity to be heard. The State Division is required to review all relevant data, including testimony from the public hearing, prior to rendering a decision.

Pursuant to the proposed new rules, the State Division must provide a public notice of its final action (as well as personal notice to parties directly affected by the action), setting forth in writing the basis for the decision. An agency whose application has been denied, or whose status has been altered, may appeal the decision through the State's administrative process, and then to the Assistant Secretary on Aging, if still dissatisfied. The Assistant Secretary may affirm or set aside the decision of revocation made at the State level.

The State Division may revoke the status of an AAA when the geographic boundaries of the PSA have changed. In addition, the State Division may revoke the status of AAA for the following: (1) a substantial failure by the agency in the provision or administration of an approved area plan; (2) an inconsistency between the agency's activities with the statutory requirements; (3) conflict with the requirement in the Act that a designated agency function only as an AAA; or (4) a determination by the State Division through on-site assessments that the designated AAA lacks the authority, or qualified staff and/or capacity to carry out the functions required of it by law.

The proposed new rules at N.J.A.C. 8:88A-1 set forth the general provisions of the chapter. N.J.A.C. 8:88A-1.1 sets forth the purpose of the chapter, which is to establish procedures for the designation, revocation, and modification of a PSA and/or an AAA. N.J.A.C. 8:88A-1.2 sets forth the definitions for the chapter. N.J.A.C. 8:88A-1.3 establishes the notice and public hearing requirements for final action by the State Division in designating, revoking, or otherwise modifying a PSA or AAA.

The proposed new rules at N.J.A.C. 8:88A-2 establish more specific requirements and procedures for the designation and revocation of PSA and AAA status. N.J.A.C. 8:88A-2.1 sets forth the factors to be considered by the State Division in dividing the State into district PSAs. N.J.A.C. 8:88A-2.2 establishes the standards and procedures, other than the notice and public hearing requirement, for making or modifying a designation of a PSA. N.J.A.C. 8:88A-2.3 establishes the standards and procedures, other than the public hearing requirements, for designating an AAA. N.J.A.C. 8:88A-2.4 sets forth procedures for revoking AAA status. N.J.A.C. 8:88A-2.5 establishes the bases for which an AAA designation may be revoked.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules establish a procedure for designating PSAs, and Area Agencies on Aging, as required by Federal law in order to maintain Federal funding for services for older adults in New Jersey. The services funded under the Act serve adults

60 years of age and older and are designed to enable these older adults to lead independent lives in the community. The services are coordinated through the AAA located in each PSA. The proposed new rules have assured, and would continue to assure, that Federal funding be maintained, and that designated entities (and those they serve) are afforded due process in the event of a redefining of a PSA or redesignation of an AAA. The amendments to the expired rules proposed as new rules would have no social impact.

Economic Impact

The proposed new rules have not had, and the State Division does not expect the proposed new rules to have, a specific economic impact. However, the State Division receives Federal funds under the Act to support the provision of a broad array of services to older adults in this State. These funds, in combination with State and local funds, total over \$85 million annually and are allocated to AAAs through the Area Plan process for the development of local service delivery systems. This State/local partnership maximizes available resources and fosters the development of a broad array of in-home and community based services. The proposed new rules support that process.

Economic impact may occur through the Area Plan Contract process, if, for instance, a nonprofit AAA was designated to replace an existing AAA within county government. This action may result in a significant loss of county "Maintenance of Effort" funding. The amount would vary by county. An even greater loss in "Maintenance of Effort" funding may be the result of any effort to regionalize the PSAs.

The amendments to the expired rules proposed as new rules would have no social impact.

Federal Standards Statement

The Department of Health and Senior Services certifies that a Federal standards analysis is not required, because the proposed new rules and the proposed amendments to the expired rules proposed as new rules meet but do not exceed the requirements of the Older Americans Act of 1965, 42 U.S.C. §§ 3001 et seq., and the rules promulgated pursuant thereto, at 45 C.F.R. §§ 1321 et seq.

Jobs Impact

The proposed new rules and the proposed amendments to the expired rules proposed as new rules are designed to maintain and assure the continuance of existing services. The rules and amendments have not resulted, and the State Division does not anticipate that the rules and amendments would result, in either a gain or a loss in jobs in this State.

Agriculture Industry Impact

The proposed new rules and the proposed amendments to the expired rules proposed as new rules have had no impact on the agriculture industry of the State, and the State Division does not anticipate that they would have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed rules and the proposed amendments to the expired rules proposed as new rules may impose recordkeeping, reporting, and other compliance requirements upon entities that may meet the definition of small business, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, if such entities desire to become designated as an AAA.

The proposed new rules require AAAs to maintain programmatic and fiscal records; follow Federal and State laws; conduct an annual needs assessment; contract for needed services; develop and maintain an aging service network; and monitor and assess the performance of grantees. Each AAA operates and administers the county aging network through annual Older Americans Act funding transmitted under the area plan contract. They are reimbursed for their costs, as delineated in their area plan contract.

The State Division has made no provision for any lesser or differing standards in the requirements imposed on small businesses, as the requirements are mandated by the Older Americans Act of 1965. Moreover, the State Division does not believe that any of the requirements should be reduced or relaxed because of the size of the business involved. The State Division believes that doing so would be inappropriate in light of the various funding sources for the services to be provided, and the population to be served by a designated agency.

The State Division does not anticipate that entities subject to the proposed new rules and the proposed amendments to the expired rules proposed as new rules would be required to retain the services of professionals in order to comply.

Smart Growth Impact

The proposed new rules and the proposed amendments to the expired rules proposed as new rules would have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the expired rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 8:88A.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

8:88A-1.2 Definitions

Words and terms used in this chapter shall have the meanings set forth below, unless the context clearly indicates otherwise.

...

"Area Agency on Aging" means a public or private nonprofit agency designated by the State Division [of Senior Affairs] in accordance with this chapter and 45 C.F.R. § 1321.17 to act as the central coordinating and planning body for older adult services within a PSA.

"Area Plan" means the document completed by each Area Agency on Aging and submitted to the State Division [of Senior Affairs] delineating the comprehensive and coordinated system of service delivery to be provided for older adults in the PSA through the allocation of Federal, State and local dollars.

...

"Planning and Service Area" or "PSA" means the geographic unit designated by the State Division [of Senior Affairs] for the allocation of funds and the delivery of services for older adults.

...

"State Division" means the [State] Division of [Senior Affairs,] Aging and Community Services in the Division of Senior Services of the New Jersey Department of Health and Senior Services.

...

8:88A-2.2 Designation as a Planning and Service Area (PSA)

(a)-(b) (No change.)

(c) A PSA may be modified by the State Division on its own initiative or upon application made by the chief elected executive of any unit of general purpose local government which has a population of 100,000 or more, or by any region within the State recognized for purposes of area-wide health planning.

1. (No change.)

2. Applications may be submitted to:

Administrator, Office of Area Aging Administration

Division of [Senior Affairs] Aging and Community Services

Department of Health and Senior Services

PO Box [722] 807

Trenton, NJ 08625- [0722] 0807

(d)-(g) (No change.)